

1 WAYNE R. BERRY, Senior Trial Attorney, DC BN 429661
2 PETER B. DOLAN, Senior Trial Attorney, IL BN 0065 0285
3 CATHERN H. SMITH, Trial Attorney, DC BN 475586
4 MEGAN GUENTHER, Trial Attorney, MD Bar (numbers not used)
5 Office of the Solicitor, Plan Benefits Security Division
6 United States Department of Labor
7 200 Constitution Avenue, N.W., Room N-4611
8 Washington, D.C. 20210
Telephone: (202) 693-5600, Facsimile: (202) 693-5610
berry.wayne@dol.gov, (202) 693-5585
dolan.peter@dol.gov, (202) 693-5612
smith.cathern@dol.gov, (202) 693-5625
guenther.megan@dol.gov, (202) 693-5586

9
10 Attorneys for Plaintiff ELAINE L. CHAO
Secretary of Labor, United States Department of Labor

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14
15 ELAINE L. CHAO, Secretary of Labor,) Civil Case No. C 04-4949 PJH (EMC)
16 United States Department of Labor,)
17 Plaintiff,) **Application for Motion to Shorten Time**
18 v.) **for Hearing and [Proposed] Order**
19 LAWRENCE J. MAZZOLA, et al.,)
20 Defendants.) **Date:** Submitted on the Papers
21) **Time:**
22) **Court:** Courtroom C, 15th Floor
23) **Magistrate Judge Edward M. Chen**
24)
25)
26)
27)
28)

Pursuant to L.R. 6-3, the Secretary makes this motion to shorten time and requests
that, subject to the Court's availability, the hearing on the Secretary's Expedited Motion
for Protective Order Modifying Scope of 30(b)(6) Oral Deposition be held on September
13, 2006.

1 On May 24, 2006, the Defendants represented by Jones Day served the
 2 Defendants' Fourth Amended Notice of 30(b)(6) Oral Deposition. The parties have met
 3 and conferred several times since that date in an attempt to resolve their differences with
 4 the most recent exchanges taking place on August 17, 2006.
 5

6 On August 16, 2006, the Defendants' notified the Secretary of their intent to file a
 7 motion to compel. On August 17, 2006, the Secretary explained to the Defendants that in
 8 order to get relief she seeks, and as a purely procedural matter, the Secretary must file a
 9 motion for a protective order. The Defendants refused to agree, insisting upon filing their
 10 own motion to compel.¹ To protect her interests, the Secretary is left with no choice but to
 11 file an Expedited Motion for Protective Order Modifying Scope of 30(b)(6) Oral
 12 Deposition accompanied by a motion to shorten time.
 13

14 The Secretary would be substantially harmed if the Court were to consider a
 15 motion to compel from the Defendants without considering the issues raised in the
 16 Secretary's Expedited Motion for Protective Order Modifying Scope of 30(b)(6) Oral
 17 Deposition. For reasons set forth in her concurrently filed memorandum in support of her
 18 Expedited Motion, the Secretary takes the position that the Defendants' 30(b)(6) Notice is
 19 not consistent with the Federal Rules of Civil Procedure, the needs of this case, and the
 20 discovery guidance this Court provided in its August 10, 2006 Order and at the August 9,
 21
 22
 23
 24

25 ¹ Despite the inability of the parties to agree upon the filing of a single motion, the
 26 Secretary will work with the Court to reduce any additional burden arising from the dual
 27 motions.
 28

1 2006 hearing on the Defendants' Motion to Compel Deposition Testimony and Production
2 of Documents. The Defendants take the position that their 30(b)(6) Notice is appropriate.

3 Accordingly, subject to the Court's availability, the Secretary respectfully requests
4 the following expedited briefing schedule:

- 5
- 6 o Defendants' Opposition Due: August 30, 2006
 - 7 o Secretary's Sur-Reply Due: September 6, 2006
 - 8 o Hearing: September 13, 2006

9 If this Motion is not heard on an expedited basis, the Secretary arguably will be
10 required to produce one or more 30(b)(6) witnesses on October 2, 2006, thereby causing
11 undue burden and expense.

12 This is the second discovery motion filed with the Court. The requested
13 modifications to the Defendants' 30(b)(6) Notice will assist the parties in completing
14 discovery by the November 17, 2006, discovery cut-off date.

15 In the event that some or all of the issues are resolved before the hearing, the
16 Secretary will immediately notify the Court.

17 Dated: August 17, 2006 HOWARD M. RADZELY
18

19 Solicitor of Labor

20 TIMOTHY D. HAUSER
21 Associate Solicitor

22 By: _____
23 Cathern H. Smith

24
25 Attorneys for Plaintiff
26 Elaine L. Chao, Secretary of Labor
27 United States Department of Labor

1 [Proposed] Order
2

3 The Court having considered the Secretary's Application for Motion to Shorten
4 Time for Hearing on the Secretary's Expedited Motion for Protective Order to Prevent
5 Depositions and for good cause shown, GRANTS that motion.

6 The Court hereby sets the dates:
7

- 8 o Defendants' Opposition Due: August 30, 2006
- 9 o Secretary's Sur-Reply Due: September 6, 2006
- 10 o Hearing: ~~September 13, 2006~~ September 15, 2006 at 10:30 a.m.

11 IT IS SO ORDERED:

12 Dated: August 18, 2006

